IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7093 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PORBANDAR NAGARPALIKA

Versus

KISHAN DHMANA

Appearance:

MR YOGESH S LAKHANI for Petitioner

RULE SERVED for Respondent

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 17/01/2002

ORAL JUDGEMENT

The present petition is filed by Porbandar Nagarpalika through its Chief Officer, challenging the judgement and award passed by the Labour Court, Junagadh in Reference (LCJ) No.1728 of 1990 (Old) which is renumbered as Reference (LCJ) No.28 of 1996 dated

12.3.2001. By the impugned award the Labour Court has ordered reinstatement with continuity of service with 25% back wages without consequential benefits.

2. Said judgement and award is challenged by the petitioner on the following grounds:

(i) That the respondent workman was a daily rated workman. On expiry of his appointment for a particular period, there is an automatic termination.

(ii) That the respondent workman has not completed 240 days of service in any year. Therefore, he is not entitled to any protection under the relevant provisions of Labour laws. As the work was not available with the petitioner, the respondent workman was not given any work.

(iii) That protection provided under section 25F of the Industrial Disputes Act, 1947 is not available to the respondent workman.

3. The learned advocate for the petitioner submitted that the respondent workman was never sincere about the reference filed in they year 1989 which was dismissed in the year 1990 for non prosecution. Though Misc. Civil Application No.21 of 1993 was filed, he did not pursue the same. It is pointed out in reply to the said MCA for restoration that the respondent workman was engaged in some other employment getting better rewards. He did not pursue the case for four years, therefore, he is not entitled to any relief.

4. Learned advocate for the petitioner Nagarpalika relied upon a judgement of the Apex Court in the mater between State of Himachal Pradesh v. Suresh Kumar Verma and another, reported in AIR 1996 SC 1565, to contend that appointment of daily wage basis is not an appointment to post according to Rules and that termination of daily wage employees is automatic on coming to end of project employing them and that a direction to reengage them in any other work or appoint them against existing vacancies cannot be given by Court. Learned advocate for the petitioner relied upon paras 3 and 5 of the said judgement, which read as under:

> "3. It is seen that the project in which the respondents were engaged had come to an end and that therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any

other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment dehors the rules."

"5. Under these circumstances, the view of the High Court is not correct. it is accordingly set aside. It is mentioned that the respondents have become averaged by now. If they apply for any regular appointment by which time if they become barred by age, the State is directed to consider necessary relaxation of their age to the extent of their period of service on daily wages and then to consider their cases accordingly to rules, if they are otherwise eligible."

5. Learned advocate for the petitioner also relied upon another judgement of the Apex Court in the matter between State of U.P. and others v. Ajay Kumar, reported in (1997) 4 SCC 88 wherein the Apex Court was pleased to hold that the daily wager is not entitled to regularisation and therefore, the High Court's order to regularise such an employee as and when vacancy arose and to continue him till then was held to be illegal. Learned advocate relied upon observations made in para 3 of the said judgement which read as under:

"3. The admitted position is that the respondent came to be appointed on daily wage basis on 14.2.1985 as Class IV employee, Nursing Orderly, in the Medical College by the Medical Superintendent. When the respondent filed a writ petition in the High court for his regularisation, the learned Single Judge pointed out that the respondent has not brought to the notice of the Court, any statutory rule under which the respondent could be regularised, on the basis of the service rendered by him as a daily wage earner. Even the method of recruitment adopted by the Superintendent was not proper inasmuch as he did not call for applications. The Division Bench reversed the decision of the learned Single Judge and had given directions. It is now settled legal position that there should exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post. Daily wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists. Under these circumstances, the

Division Bench was clearly in error in directing the appellant to regularise the service of the respondent to the post as and when the vacancy arises and to continue him until then. The direction in the backdrop of the above facts is, obviously, illegal."

6. In view of the aforesaid discussion, the present Special Civil Application is allowed. The impugned judgement and award, Annexure 'A' to the petition is hereby quashed and set aside. Rule is made absolute with no order as to cost.

(Ravi R. Tripathi, J.)

karim